

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

GROWING SEEDS CHILD DEVELOPMENT
CENTER and TERESA JACKSON
Respondents

Case No.: I-00-40907

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 – 2-1802.05, and Title 29 Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”), which pertains to the regulation of child development centers. By Notice of Infraction (No. 00-40907) served on December 5, 2001, the Government charged Respondents Growing Seeds Child Development Center and Teresa Jackson, the owner, with violations of the following regulations: 29 DCMR 315.2(e), which requires the director of a child development center to be responsible for supervision and administration of the center, including the designation of a teacher to be responsible in the director’s absence¹; 29 DCMR 315.4, which specifies the qualifications for teachers at child development centers²; and 29 DCMR 316.1,

¹ 29 DCMR 315.2(e) provides: “The director shall be responsible for supervision and administration of the child development center, including the following: ...(e) Designation of a teacher to be responsible in the absence of the director....”

² 29 DCMR 315.4 provides: “Teachers at child development centers shall be qualified by meeting the requirements of one (1) of the following: (a) A bachelor’s degree in early childhood education or

which regulates the size of child groups/adult-child ratio in child development centers³. The Notice of Infraction alleged that the violations occurred on November 28, 2001, at the facility operated by Respondents located at 3800 14th Street, N.W., (the “Center”), and sought fines in the total amount of \$1,050.

Respondents filed an untimely answer of Admit With Explanation on January 15, 2002,⁴ and requested the suspension or reduction of the authorized fines and the statutory penalty for failure to answer within the time allowed by the statute.⁵ Respondent Jackson represented that she received the Notice of Infraction on December 17, 2001, and mailed the answer on the same day. She said that it wasn’t until she received the order of default issued by this administrative

a related field with a minimum of fifteen (15) hours in early childhood education courses; (b) Two (2) or more years of college, including at least fifteen (15) hours of early childhood education courses; and one (1) year of experience in a child development facility; (c) A high school diploma or its equivalent and three (3) years of experience as a teacher or assistant teacher in a child development center, plus, on or before July 1, 1977, nine (9) college credit hours in early childhood education from an accredited college or university; or (d) Experience as a teacher or assistant teacher in a licensed child development center; Provided, that he or she has been awarded a child development associate credential.”

³ 29 DCMR 316.1 provides: “The size of any one (1) group of children shall not exceed that specified in the following chart for each age group:

AGE	MAXIMUM SIZE OF GROUP	CHILD-ADULT RATIO
2 years to 2 years, 6 months	8	4 to 1
2 years, 6 months through 3 years	16	8 to 1
4 years	20	10 to 1
5 years	25	15 to 1
6 years through 14 years	30	15 to 1

⁴ An answer was due on or before December 26, 2001, twenty days after service by mail. D.C. Official Code §§ 2-1802.02(e) and 2-1802.05.

⁵ D.C. Official Code § 2-1801.04(a)(2) provides that a respondent who fails to answer a notice of infraction within the time allowed by the statute may be assessed a penalty equal to the amount of the civil fine for each infraction.

court on January 7, 2002, that she was aware that the answer had not been filed. Upon receipt of the order of default, Respondent Jackson called the Government and the clerk's office of this administrative court, faxed a copy of the original answer and sent another copy by certified mail. The record in the case reflects that Respondents' original answer was received on January 15, 2002, in an envelope with a December 19, 2001, postmark.

Respondents' explanation regarding the violation of 29 DCMR 315.2(e) was that while the Center's director was on vacation Respondent Jackson was the teacher designated to be responsible in the director's absence. However, at the time of the violation, Respondent Jackson was also temporarily absent from the Center and an assistant teacher was in charge until she returned. Ms. Maureen Ryan, the Government Inspector who issued the Notice of Infraction, informed the assistant teacher that she could not be in charge "because she did not have a CDA [child development credential]."⁶

The Respondents represented that there was an established chain of command in place for the Center of which the staff was aware, but that the staff members present were nervous and reluctant to talk to the Government inspector when questioned about it.

Respondents have submitted a notice on its letterhead entitled "Chain Of Command" with a date "Revised 11/29/01". The pertinent portion of the "Chain Of Command" states as follows:

⁶ See note 2 *supra*. Among the bases for qualifying as a teacher is "[e] xperience as a teacher or assistant teacher in a licensed child development center; *Provided, that he or she has been awarded a child development associate credential.*" 29 DCMR 315.4(d) (Emphasis added).

In the absence of the Director

The Executive Director will over see the operations of the center

The Teachers will over see their own classes as usual

In the absence of the Teacher the Assistant Teacher will over see the classroom

In the absence of the Director and the Assistant (sic) Director the Office manager will over see the operations of the center. The teachers will over see their individual classes.

Regarding the violation of DCMR 29 315.4, Respondents admitted that at the time of the violation there was not a qualified teacher for each of the two groups of children at the Center, in accordance with the regulation, but only assistant teachers. Respondents explained that for one group Respondent Jackson was the teacher, and in her absence an assistant teacher assumed responsibility for the group, in accordance with 29 DCMR 315.7.⁷ Respondents represented that since the violation occurred another qualified teacher has been employed and an assistant teacher has been in the process of being certified. Presumably, this means that another qualified teacher would be available for a second group of children.

Regarding the violation of 29 DCMR 316.1, Respondents stated that a staff member was allowed to have her own children, triplets, in a class because her babysitter was away on her honeymoon. This resulted in the size of one group being larger than allowed by the regulation.

The Government did not file a response to Respondents' explanations and request for the suspension or reduction of the fines and statutory penalty within the time allotted.

⁷ Among the duties of an assistant teacher is: "In the absence of the teacher, assuming responsibility for the children in the group...." 29 DCMR 315.7 (b)

II. Findings of Fact

1. By their answer of Admit with Explanation Respondents have admitted that on November 28, 2002, at the child development center owned and operated by them at 3800 14th Street, N.W., they violated the following regulations:
 - a. 29 DCMR 315.2(e), for the Director not providing supervision/administration, including designating a teacher to be responsible in the absence of the Director;
 - b. 29 DCMR 315.4, for unqualified staff; and
 - c. 29 DCMR 316.1, for having child groups in excess of size limitations.
2. Respondents had established a chain of command at the Center, but a teacher was not designated to be responsible at all times in the absence of the director.
3. At the time of the violation, an assistant teacher had been designated to be responsible in the director's absence.
4. Respondents have accepted responsibility for the violations. However, Respondents also have a substantial history of non-compliance with the regulations pertaining to child development centers.
5. Respondents acted promptly in serving their answer to the Notice of Infraction by mail and, through no fault of Respondents, it was not received for filing within the time allowed by the statute.

III. Conclusions of Law

By their answer of Admit with Explanation Respondents have admitted that they violated 29 DCMR. 315.2(e), 29 DCMR 315.4 and 29 DCMR 316.1 on November 28, 2001, as charged. A violation of 29 DCMR 315.2(e) is classified as a Class 4 infraction with a fine of \$50 for the first offense. 16 DCMR §§ 3222.3 and 3201.1(e)(1). Violations of 29 DCMR §§315.4 and 29 DCMR 316.1 are each classified as a Class 2 infraction with a fine of \$500 for a first offense. 16 DCMR §§ 3222.1(i) and 3222.1(g); 16 DCMR 3201.1(b).

Respondents have not shown mitigating facts and circumstances that warrant the suspension or reduction of the authorized fines for any of the violations. As for the violation of 29 DCMR 315.2(e), it appears that Respondents do not understand that it is required that a qualified *teacher* be designated to be responsible for a child development center in the director's absence. The chain of command Respondents had established does not designate a *teacher* to be the responsible person whenever the director is absent and at the time of the violation an *assistant teacher* had been designated. Under the law this is insufficient, since the regulation "mandates that a person with the training and experience demanded of a *teacher* must supervise the facility in the director's absence." *DOH v. Newcomb Day Care Center*, OAH No.I-00-40411 at 2 (Final Order, January 4, 2002) (Emphasis added). To be qualified as a teacher, a person must satisfy the education and experience requirements of 29 DCMR 315.4, which are significantly more stringent than those for assistant teachers. 29 DCMR 315.5.⁸

⁸ 29 DCMR 315.5 provides: "As assistant teacher shall be qualified by meeting the requirements of one (1) of the following: (a) Two (2) or more years of college and demonstration, to the satisfaction of the director, of skill and competence with children; and (b) A high school diploma and certificate in child development from an accredited vocational high school; or, instead of the child development certificate, one (1) year of experience in a child development center."

As for the violation of 29 DCMR §§ 315.4, Respondents argue that 29 DCMR 315.7(b) permitted an assistant teacher to assume responsibility for one of the child groups in the absence of Respondent Jackson, who was the qualified teacher assigned to the group. In light of Respondents' plea of Admit with Explanation, it is unnecessary to decide under what, if any, circumstances an assistant teacher may assume the responsibilities of the teacher assigned to a group, in accordance with the regulation.⁹ Also, the issue is not pertinent to the violation for not having a qualified teacher assigned to the second child group.

While it appears that Respondents are taking remedial action regarding the violations of 29 DCMR §§ 315.4 and 316.1, and they have accepted responsibility for their unlawful conduct, their prior non-compliance with the regulations is an aggravating and, therefore, an offsetting factor. See *DOH v. Growing Seeds Child Development*, OAH Final Order, I-00-40041 (May 16, 2000) (violations of 29 DCMR 316.1, which regulates the size of groups, and 29 DCMR 316.2, which regulates staffing for groups); *DOH v. Growing Seeds Child Development*, OAH Final Order, I-00-40901 (September 5, 2001) (violations of 29 DCMR 315.3, which specifies the qualifications for director of child development centers, 29 DCMR 315.4, which specifies the qualifications for teachers, and 29 DCMR 325.13, which requires employees to have an annual health examination, etc.). Accordingly, I shall impose the authorized fines for each of three violations, in the total amount authorized, \$1,050.

⁹ A decision as to the nature and duration of a teacher's absence to permit an assistant teacher to assume the responsibility for a group under 29 DCMR 315.7(b) must await another case where the issue is properly presented and is necessary for a decision. See generally *DOH v. Tot's Nursery School*, OAH Final Order, C-00-80001 at 3 (November 14, 2000).

In addition to the authorized fines, Respondents are subject to a statutory fine for their failure to file their answer timely. The Civil Infractions Act requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer within the time allowed. D.C. Official Code §§ 2-1802.02(f) and 2-1802.05. If a respondent cannot make such a showing, the statute requires that a penalty equal to the amount of the authorized fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2) and 2-1802.02(f).

Respondents mailed their answer promptly after receipt of the Notice of Infraction, and sufficiently in advance of the filing deadline. The four-week delay of the United States Postal service in delivering the answer was not as a result of any fault on the part of the Respondents. Accordingly, I find that good cause for the untimely filing of the answer has been shown and the statutory penalty will not be imposed.

IV. ORDER

Based on the above findings of fact and conclusions of law, it is this ____ day of _____ 2002:

ORDERED, that Respondents Growing Seeds Child Development Center and Teresa Jackson, jointly and severally, shall pay a total of **ONE THOUSAND FIFTY DOLLARS (\$1,050)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount within twenty (20) calendar days of the date of mailing of this order, by law, interest will accrue on the unpaid amount at the rate of 1½ % per month, or portion thereof, beginning with the date of this order, pursuant to D.C. Official Code § 2-1803(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits, pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real or personal owned by Respondents, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2 -1801.03(b)(7).

FILED **07/09/02**

Robert E. Sharkey
Administrative Judge